

STEVEN G. KALAR
Federal Public Defender
ROBERT CARLIN
Assistant Federal Public Defender
55 South Market Street, Suite 820
San Jose, CA 95113
Telephone: (408) 291-7753
E-mail: robert_carlin@fd.org

Counsel for Defendant
JOSE FARIAS BARAJAS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	No. CR-12-00723 EJD
)	
Plaintiff,)	DEFENDANT’S RESPONSE TO
)	GOVERNMENT’S SENTENCING
vs.)	MEMORANDUM
)	
JOSE FARIAS BARAJAS,)	
)	
Defendant.)	
_____)	

In the government’s sentencing memorandum, it makes several allegations concerning the report prepared by Dr. Timothy Darning. This memorandum responds to those allegations.

The government claims that despite its “numerous requests,” the defense has failed to make Dr. Darning available in person or by phone. See Gov’t Sent’g Memo at 9:12-13. In fact, undersigned counsel attempted to facilitate a conversation between the government and Dr. Darning. The defense’s only request was that the government provide a general sense of its questions for Dr. Darning. The government never responded. The government now expresses concern that Dr. Darning did not consider certain information in his assessment. Had the government made this concern known to the defense, the defense would have provided that

1 information to Dr. Darning and asked him to incorporate the information into his report. The
2 government did not do this, however.

3 In addition, the government now argues that unless this Court is prepared to grant its
4 request for a within-Guidelines sentence, there should be an evidentiary hearing so the
5 government can cross-examine Dr. Darning. Again, the government has not previously
6 mentioned the possibility of an evidentiary hearing to the defense. The defense would also note
7 that it had previously invited the government to obtain its own expert to examine Mr. Farias
8 Barajas if it was not satisfied with Dr. Darning's evaluation. The government did not do so.

9 At this point, the defense respectfully seeks the Court's guidance. The defense believes
10 that the Court has sufficient information to proceed with the sentencing on Thursday. Dr.
11 Darning conducted an extensive evaluation according to a methodology that has been approved
12 by the Supreme Court and members of his profession. However, if the Court finds it preferable
13 to continue the hearing, the defense can provide Dr. Darning with whatever information the
14 government believes is relevant and ask Dr. Darning whether it changes his evaluation in any
15 way. Alternatively, if the Court believes that it would benefit from an evidentiary hearing, the
16 defense will work to coordinate a date that is convenient for the Court, the parties, and Dr.
17 Darning.

18
19 Dated: May 19, 2015

20 Respectfully submitted,

21 STEVEN G. KALAR
22 Federal Public Defender

23 _____/S/_____
24 ROBERT CARLIN
25 Assistant Federal Public Defender
26